

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA G. FRANKLIN Sr.,

Plaintiff,

V.

JOHN ACKERMAN, et al.,

Defendant.

CASE NO. 3:21-cv-05071-RSM-BAT

**ORDER DISMISSING SOME
CLAIMS AND DIRECTING
SERVICE BY U.S. MAIL ON
REMAINING DEFENDANTS**

Having reviewed the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge, and the remaining record, the Court finds and ORDERS:

(1) The Court ADOPTS the report and recommendation, Dkt. 9. Plaintiff's claims set forth on pages 18-19 of the complaint, Dkt. 4, against defendants Jeannie Bryant, Deputy Prosecuting Attorney and Public Defenders Neil Anderson and Michelle Michaelex are DISMISSED with prejudice.

(2) The Clerk is therefore directed to terminate those defendants from the docket.

(3) The remaining claims against the remaining defendants are re-referred to
Judge Tsuchida.

(4) The Court further orders:

**ORDER DISMISSING SOME CLAIMS AND
DIRECTING SERVICE BY U.S. MAIL ON
REMAINING DEFENDANTS - 1**

1 a. Service by Clerk on Plaintiff

2 Plaintiff is currently incarcerated at Washington Corrections Center at Monroe and is
 3 subject to Mandatory Electronic E-Filing pursuant to General Orders 02-15 and 06-16. Plaintiff
 4 must therefore file all pleadings using the E-Filing procedures set forth in the general orders.
 5 Pleadings that are not filed in conformity with the E-Filing procedures will be summarily
 6 stricken. The Clerk shall provide copies of all pleadings to Plaintiff using the E-Service
 7 procedures.

8 Service by Clerk on Defendants

9 Defendants are allegedly employees or agents of Clark County and the Clerk is directed
 10 to send the following to the defendants listed below by United States Mail: copies of plaintiff's
 11 Complaint (Dkt. 4), this Order, the notice of lawsuit and request for waiver of service of
 12 summons, and a waiver of service of summons:

John Ackerman	HAS Naphcare
K. Vandenberg	D.O.N Naphcare
C. Hackney	R.N. Clark County Jail
Kerri Taft	R.N. Clark County Jail
K. Beltran	Commander Clark County Jail
Chuck Atkins	Sheriff, Clark County
Ric Bishop	Chief Clark County Sheriff
Songer	Sergeant Clark County Jail
A. Rice	R.N. Clark County Jail
M. Paulus	R.N. Clark County Jail
Shoemaker	Officer Clark County Jail

19 The defendants are notified they **need not** respond to claims regarding the dismissed
 20 public defenders and deputy prosecuting attorney as those claims have been dismissed with
 21 prejudice by separate order.

22 The Clerk shall provide a courtesy copy of the above to the Clark County Prosecuting
 23 Attorney 1300 Franklyn Street, Third Floor, PO Box 5000, Vancouver, WA 98666-5000. The

1 Court declines to direct service against any named Jane/John Does defendants at this time as
2 those individuals have not been sufficiently identified.

3 b. Response Required

4 Defendant(s) shall have **thirty (30)** days within which to return the enclosed waiver of
5 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**
6 **days** after the date designated on the notice of lawsuit to file and serve an answer to the
7 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

8 A defendant who fails to timely return the signed waiver will be personally served with a
9 summons and complaint and may be required to pay the full costs of such service, pursuant to
10 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally
11 served shall file an answer or motion permitted under Rule 12 within **twenty-one (21) days** after
12 service.

13 c. Filing and Service by Parties, Generally

14 All attorneys admitted to practice before this Court must file documents electronically via
15 the Court's CM/ECF system. Counsel are directed to the Court's website,
16 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
17 **Plaintiff shall file all documents electronically using the above e-filing procedures because**
18 **he is in the custody of the Washington State Department of Corrections.** All filings must
19 indicate in the upper right-hand corner the name of the magistrate judge to whom the document
20 is directed.

21 Any document filed with the Court must be accompanied by proof that it has been served
22 upon all parties that have entered a notice of appearance in the underlying matter. Plaintiffs shall
23 indicate the date the document is submitted for e-filing as the date of service.

1 d. Motions, Generally

2 Any request for court action shall be set forth in a motion, properly filed and served.

3 Pursuant to LCR 7(b), the argument being offered in support of a motion shall be submitted as a
4 part of the motion itself and not in a separate document. The motion shall include in its caption
5 (immediately below the title of the motion) a designation of the date the motion is to be noted for
6 consideration upon the Court's motion calendar.

7 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
8 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
9 motions for default, requests for the clerk to enter default judgment, and motions for the court to
10 enter default judgment where the opposing party has not appeared shall be noted for
11 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall
12 be noted for consideration no earlier than the third Friday following filing and service of the
13 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than
14 the fourth Friday following filing and service of the motion. *Id.*

15 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
16 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday
17 immediately preceding the date designated for consideration of the motion.

18 The party making the motion may electronically file and serve not later than 11:59 p.m.
19 on the date designated for consideration of the motion, a reply to the opposing party's briefs and
20 affidavits.

21 e. Motions to Dismiss and Motions for Summary Judgment

22 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
23 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil

1 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
2 noted for consideration no earlier than the fourth Friday following filing and service of the
3 motion.

4 Defendants filing motions to dismiss based on a failure to exhaust or motions for
5 summary judge are advised that they MUST serve a *Rand* notice concurrently with motions to
6 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner
7 plaintiffs will have fair, timely and adequate notice of what is required of them in order to
8 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit has
9 set forth model language for such notices:

10 A motion for summary judgment under Rule 56 of the Federal Rules
11 of Civil Procedure will, if granted, end your case.

12 Rule 56 tells you what you must do in order to oppose a motion for
13 summary judgment. Generally, summary judgment must be granted
14 when there is no genuine issue of material fact – that is, if there is
15 no real dispute about any fact that would affect the result of your
16 case, the party who asked for summary judgment is entitled to
17 judgment as a matter of law, which will end your case. When a party
18 you are suing makes a motion for summary judgment that is
19 properly supported by declarations (or other sworn testimony), you
cannot simply rely on what your complaint says. Instead, **you must**
set out specific facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided in
Rule 56(e), that contradict the facts shown in the defendant's
declarations and documents and show that there is a genuine
issue of material fact for trial. If you do not submit your own
evidence in opposition, summary judgment, if appropriate, may
be entered against you. If summary judgment is granted, your
case will be dismissed and there will be no trial.

20 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added).

21 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their
22 motion stricken from the Court's calendar with leave to re-file.

23 f. Direct Communications with District Judge or Magistrate Judge

1 No direct communication is to take place with the District Judge or Magistrate Judge with
2 regard to this case. All relevant information and papers are to be directed to the Clerk.

3 (5) The Clerk is directed to send copies of this Order to the parties.

4 (6) The Clerk is directed to send copies of this Order to the parties and to Judge
5 Tsuchida.

6 Dated this 2nd day of April, 2021.

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10 RICARDO S. MARTINEZ
11 CHIEF UNITED STATES DISTRICT JUDGE
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